

Statement of  
James B. West, Legislative Counsel  
Iowa Automobile Dealers Association  
To  
Motor Vehicle Dealers Study Committee  
October 11, 2005

I want to qualify these comments by stating that the Iowa Automobile Dealers Association ("IADA") has no position on House Study Bill 224, House File 575 or Senate Study Bills 1236 or 1237 or any other amendment to Chapter 322, the dealer license law, which deal with the issues you are studying today: "Iowa law pertaining to the relocation of a licensed motor vehicle dealership." There are IADA members on both sides of these issues. IADA is strictly neutral on these proposals and the issues they address and nothing in this statement should be construed as either support or opposition with respect to those proposals and issues.

It is my understanding that you have asked me to briefly explain the regulation of the distribution and sale of new motor vehicles as it relates to your study.

The Iowa legislature has declared that the distribution and sale of motor vehicles is an industry affected with a public interest. The distribution and sale of a motor vehicles in Iowa is a regulated industry.

The regulation of the distribution and sale of new motor vehicles is based upon the franchise between the manufacturer and the new motor vehicle dealer.

The regulation of the distribution and sale of new motor vehicles is contained in two chapters of the Code, Chapter 322, the dealer license law and Chapter 322A, the motor vehicle franchise law. Both the licensure of new motor vehicle dealers under the dealer license law, Chapter 322, and the motor vehicle franchise law, Chapter 322A, are based on the franchise between the manufacturer and the new motor vehicle dealer.

## I

### DEALER LICENSE LAW

The dealer license law, Chapter 322, provides for the licensure and regulation of motor vehicle dealers by the Iowa Department of Transportation ("DOT"). Those provisions of Chapter 322 pertinent to your study are:

1.1 Section 322.3 provides that a person shall not engage in this state in the business of selling at retail new motor vehicles unless the person is authorized in writing to do so by the manufacturer of the vehicle (the "Franchise") and the person is licensed by the DOT to sell that make of new motor vehicle.

1.2 Section 322.4 requires an application for a new motor vehicle dealer's license to be filed with the DOT. The application must include the makes of new motor vehicles the applicant intends to sell, the Franchise and the location of the applicant's place of business.

1.3 Section 322.7 provides that a new motor vehicle dealer's license issued by DOT shall show the makes of new motor vehicles the new motor vehicle dealer is authorized to sell and the location of the principal place of business of the motor vehicle dealer.

1.4 Section 322.8 provides that a motor vehicle dealer may file a supplemental statement with the DOT of a change in the location of the motor vehicle dealer's place of business and provides for the issuance of a new license for the new location.

1.5 Section 322.27 provides for licensure of motor vehicle manufacturers

## II

### DEALER FRANCHISE LAW

The dealer franchise law, Chapter 322A, regulates several specific aspects of the relationship between the manufacturer and the new motor vehicle dealer. It recognizes the public interest in maintaining new motor vehicle dealerships in Iowa to provide locally available motor vehicle service. Accordingly, it protects new motor vehicle dealers from several unfair practices by manufacturers. Those provisions of Chapter 322A pertinent to your study are:

2.1 Section 322A.2 prohibits the manufacturer from terminating or not continuing a new motor vehicle dealer's Franchise unless the manufacturer establishes at a hearing before an Administrative Law Judge that there is "good cause" for termination or non-continuation and that upon termination or non-continuation of a new motor vehicle dealership there will be

another dealer for the same make in the “community” without diminution of motor vehicle service in the “community”, or that the “community” cannot support such a dealership.

2.2 Section 322A.4 prohibits a manufacturer from establishing an additional new motor vehicle dealer in a “community” in which there is a new motor vehicle dealer of that make unless the manufacturer establishes at a hearing before an Administrative Law Judge that there is “good cause” for the additional dealership.

2.3 Section 322A.11(4) provides that the fact that a new motor vehicle dealership moved to another facility and location within the dealership’s “community” which are equal to or superior to the dealership’s former location and facility is not “good cause” for terminating or not continuing the new motor vehicle dealership or for establishing another dealership of the same make in the new motor vehicle dealer’s “community”.

2.4 The definition of “community” is provided in Section 322A.1(2). Community means the new motor vehicle dealer’s area of responsibility (“AOR”) as stipulated in the franchise between the manufacturer and the dealer. AOR has the same meaning as “community” and the term AOR will be used for the balance of this statement. A reduction in the geographic area of a dealer’s AOR by the manufacturer is the same as termination or non-continuation and requires that the manufacturer establish “good cause” [Sec. 322A.1(11)].

2.5 “Good cause” is not a defined term. Instead Section 322A.11 states what is not “good cause” for termination. See 2.3 above. Section 322A.15 establishes guidelines for

determining if “good cause” is established for termination of a Franchise. It provides that “good cause” does not include a realignment, relocation or reduction of dealerships. Section 322A.16 establishes guidelines for determining if “good cause” is established for establishing another dealership of the same make in an existing dealer’s (of the same make) AOR.

### III

#### SUMMARY

As I have explained, the underpinnings of Chapter 322, the dealer license law, and Chapter 322A, the dealer franchise law are different. Chapter 322, the dealer license law, regulates dealers by the police power of the state. That relationship is between licensed dealers and the State of Iowa.

On the other hand, Chapter 322A, the dealer franchise law, regulates the relationship between the motor vehicle manufacturers and new vehicle dealers. The statute that generated the issues you are studying today is Subsection 4 of Section 322A.11 which prevents the manufacturers from terminating a dealer solely because the dealer moves within the dealer’s area of responsibility. That provision was enacted in 1998. IADA is protective of Chapter 322A, the dealer franchise law, and would oppose any attempt to amend it that would remove any protection for dealers as against the motor vehicle manufacturers.

However, the legislative proposals I referred to in the first paragraph of this statement (HSB 224, HF 575, SSB 1236 and SSB 1237) all would amend the dealer license law, Chapter

322. It is on these proposals, or similar proposals amending the dealer license law, Chapter 322, that IADA is neutral.

I am available as a resource to you to assure that any proposal does not conflict with the regulatory structure of the dealer license law, Chapter 322, but as I said IADA will be strictly neutral otherwise.

#### IV

#### OTHER STATES

It is my understanding that you have asked that I address what the law is in other states with respect to the issues you are studying today. Attached to this statement as Appendix A is a survey of other state's statutes based upon Relevant Market Area which is similar to AOR. This survey was compiled two years ago by Martha Martell, General Counsel of IADA.

#### V

#### CONCLUSION

The motor vehicle franchise law was enacted in 1970. In the past thirty-five years there have been significant changes in the motor vehicle industry. There has been a large increase in imports. Motor vehicles are more technologically advanced, complicated and expensive. There have been significant changes in the demographics of Iowa. The population of rural Iowa has seen a significant decline. There has been a significant reduction of the number of new motor vehicle dealerships in Iowa and there has been a consolidation of new motor vehicle dealerships.

There is significant competition from out of state dealers. Competition between dealers is intense. The conflicts we're seeing between members is a result of all of these factors.

All Iowa new motor vehicle dealers remain dedicated to serving Iowans' needs.

## APPENDIX A

### State Laws Survey "Relevant Market Areas" Pertaining to Dealership Moves --MM 9/19/03

#### Alaska 45.25.18Q

RMA is the 14- mile radius around the dealership or the area specified in the franchise, whichever is greater, but:

- A dealer can move to within 4 miles of another dealer without triggering protest rights of other dealers.
- A dealer can move 2 miles away from its current location without triggering protest rights.

#### Arizona 28-4452

RMA is 10 miles by shortest street route or within same community (defined as city limits) regardless of distance or 20 miles for counties with a population of less than 200,000 people, but a dealer may relocate within 1 mile of its existing location and not be subject to potential protests.

#### Arkansas 23-112-103

RMA is the 20- mile radius around the dealership or the area specified in the franchise, whichever is greater. Except manufacturers can't add a dealer closer than 10 miles to and existing dealer of the same line make.

#### Colorado 12-6-102 et seq.

RMA is the 5- mile radius around the dealership in a community of more than 150,000 and a 10-mile radius 150,000 and under or the area specified in the franchise, whichever is greater.

#### Connecticut 42-133r

RMA is the 14- mile radius around the dealership or the area specified in the franchise, whichever is greater.

#### Delaware 4902

RMA is a 10- mile radius except in New Castle County, it's 7 miles. Relocation within a dealer's RMA cannot be closer than 7 miles of a dealer of the same line make.

#### Florida 320.642

In a county with a population of less than 300,000 RMA is 20 miles; or

any dealer that made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same or contiguous county.



In a county with a population of more than 300,000 RMA is 12.5 miles; or

any dealer that made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same or contiguous county.

Georgia 10-1-622

An existing dealership can move to a new location which is within a three-mile radius of their current location as long as they have been at their current location for at least ten years. Less than ten years is an eight-mile radius.

Idaho 49-1616

Dealers within 10 miles have protest rights, except that a dealer can move within its area not closer than 7 miles to another dealer of the same line make.

Illinois 815 ILCS 710/2

RMA is 10- mile radius around the dealership if in a community of more than 300,000, a 15-mile radius if less than 300,000, or the area specified in the franchise, whichever is greater.

No protest rights if relocation is within 7 miles of the nearest dealer of the same line make in a county with more than 300,000 or 12 miles if under 300,000.

Indiana 9-13-2-151.2

RMA is 6 miles in a county having a population of more than one hundred thousand (100,000); and RMA is 10 miles in a county having a population that is not more than one hundred thousand (100,000).

Kansas 8-2430

RMA is 10 miles in a county having a population of 30,000 or more persons; and 15 miles in a county having a population of less than 30,000 persons; or the area of responsibility defined in the franchise, whichever is greater.

Kentucky 190.047

A dealer can move 10 miles without factory approval. A dealer can't move closer than 5 miles to an existing dealer with the same franchise.

Louisiana 1254

Right to protest if relocated dealer is in protesters' area of responsibility or within 5 miles.

Maine 1174-A

RMA is 5 miles in: Augusta; Auburn; Bangor; Biddeford; Brewer; Falmouth; Lewiston; Portland; Saco; South Portland; Waterville; and Westbrook and 10 miles around all other existing dealerships.

Massachusetts 938(1)

RMA is 8 miles in the counties of Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth or Suffolk are 8 or more miles from the border of the counties of Barnstable, Berkshire, Dukes, Franklin, Hampshire, Nantucket and Worcester,

RMA is 14 miles in the counties of Barnstable, Berkshire, Dukes, Franklin, Hampshire, Nantucket or Worcester are 14 or more miles from the border of the counties of Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth and Suffolk,

For all dealerships which are not included above, the area shall be a land mass comprised of circular arc segments with a radius of 8 miles from any boundary of the dealership for the arc segments that fall within the counties of Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth and Suffolk; and with a radius of 14 miles from any boundary of the dealership for the arc segments that fall within the counties of Barnstable, Berkshire, Dukes, Franklin, Hampshire, Nantucket and Worcester.

For any motor vehicle dealer who deals in whole or in part in powersport vehicles, the area shall be the entire land mass encompassed in a circle with a radius of 20 miles from any boundary of the dealership for that part of the dealership which deals in said powersport vehicles.

For any motor vehicle dealer who deals in whole or in part in recreational vehicles, the area shall be the greater of the entire land mass encompassed in a circle with a radius of 25 miles from any boundary of the dealership or the area of responsibility of the dealer as defined in the franchise agreement or the combination of the 25 miles boundary and the area of responsibility for that part of the dealership which deals in recreational vehicles.

For the purposes of this chapter, a radius measurement shall be drawn from the closest boundary of the existing dealership to the closest boundary of the site for the proposed dealership or relocation.

Section 6 Except that:

(b) Nothing contained in this section shall prohibit or prevent:

(1) the relocation of an existing motor vehicle dealer to a location within the existing dealer's own relevant market area; if the proposed new location is not within a 4 mile radius of any other same line make motor vehicle dealer unless

the site of the proposed relocation is farther away from the protesting dealer than the existing location;

(2) the appointment of a successor motor vehicle dealer at the same location as its predecessor, or within a 2 mile radius from any boundary of the predecessor's former location, but at a location that is not within a 4 mile radius of any boundary of any other same line make motor vehicle dealer unless the site of the proposed location is farther away from the protesting dealer than the existing location, within 1 year from the date on which the predecessor ceased operations or was terminated, whichever occurred later

Michigan 445.1566(6)

RMA is 6 miles in a county having a population which is greater than 25,000, and 10 miles in a county having a population which is not greater than 25,000, but can relocate within 2 miles of former place of business. 445.1576(16)

Minnesota 80E.1

Can move within 5 miles of existing location and not closer than 5 miles of another dealer of the same line make.

Missouri 407.817.1

There is a 6-mile limit in areas with a population of 100,000 and over and a 10-mile limit in areas with less than 100,000.

Nevada 482.3634

RMA 10 mile radius and 482.36357(2)(a) Can move within area and city and RMA if within 2 miles of former location.

New Hampshire 357-C:1(XXI)

RMA means any area within the town or city where the motor vehicle dealer maintains his place of business or the area, if any, set forth in a franchise or agreement, whichever is larger. Relevant market areas shall be determined "in accordance with the principles of equity."

New Jersey 56:1 0-16(11)

With factory approval, a dealer can move up to 2 miles without triggering a competing dealers right of protest. Outside 2 miles and up to 8 miles, any competing dealer can protest, from 8 to 14 miles, only the closest dealer can protest.

New Mexico 57-16-3 (Q)

RMA is seven miles, if the population of the county in which the dealership is located is two hundred fifty thousand or more;

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RMA is fifteen miles if county is less than two hundred fifty thousand but is thirty-five thousand or more; or

RMA is twenty miles in all other cases.

If the existing and proposed dealerships are in different counties, the lesser of the applicable mileage limitations shall be used.

North Carolina 20-286(13b)

Dealers can move 2 miles every 5 years in any direction, without approval of the manufacturer and without protest rights for other dealers ("leap frog" provision). Existing Dealer can move within a three-mile radius of present location if located there for at least 10 years. Normally, there is a 10-mile **RMA**.

Ohio 4517.01(DD)

RMA is ten miles from the site of a potential new dealership, except that for manufactured home or recreational vehicle dealerships it's twenty-five miles.

Oklahoma 578

RMA is 15 miles except this section does not apply:

1. To the relocation of an existing new motor vehicle dealer within the RMA of that dealer; provided, that the relocation not be at a site within ten (10) miles of a licensed new motor vehicle dealer for the same line-make of motor vehicle;
2. To a proposed additional new motor vehicle dealer which is to be established at or within two (2) miles of a location at which a former licensed new motor vehicle dealer for the same line-make of new motor vehicle has ceased operating within the previous two (2) years;
3. To the relocation of an existing new motor vehicle dealer within two (2) miles of the existing site of the new motor vehicle dealership; or
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is farther away from all other new motor vehicle dealers of the same line-make in that RMA.

Oregon 650.120(13)

(a) RMA is

(A) Not less than a 10-mile radius from the dealership site;

(B) Not less than a 15-mile radius from the dealership site if the population is less than 250,000 within a 10-mile radius from an existing dealership and 150,000 or more within a 15-mile radius from an existing dealership;

(C) Not less than a 20-mile radius from the dealership site if the population is less than 150,000 within a 15-mile radius from an existing dealership; or

(D) The area in the franchise, whichever is greater.

(b) For a dealer of motor vehicles with a gross vehicle weight rating of 8,500 pounds or more, 25 miles or are in franchise whichever is greater.

650.150

2) A dealer may relocate to a site within a one-mile radius of its existing site if the relevant market area of the existing or replacement dealership is not more than 15 miles and within a three-mile radius of the existing site if the relevant market area of the existing or replacement dealership is more than 15 miles. *[Editor's Note: I have no idea what this means.]*

5) Notice must be given to all dealers of the same line-make within the designated area of sales and service responsibility, or within a 10-mile radius, whichever is greater.

#### Pennsylvania

RMA is 20 miles. No move without factory approval. With factory approval, relocating within five miles of another dealer entitles the infringed dealer to file a protest with the dealer board. The dealer board does not like to allow less than five-mile points in most instances.

#### Rhode Island 31.5.1-1

(J) RMA is twenty (20) miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater.

#### South Carolina 56-15-46

RMA is 10 miles except this section does not apply to the:

(1) addition of a new dealership at a location that is within a three-mile radius of a former dealership of the same line make and that has been closed for less than two years;

(2) relocation of an existing dealership to a new location that is further away from the protesting dealer's location than the relocated dealer's previous location; or

(3) relocation of an existing dealership to a new location that is within a three mile radius of the dealership's current location, when it has been at the current location at least ten years.

#### South Dakota 32-6B-1

(4) "Community," the franchisee's area of responsibility as stipulated in the franchise. A community has a minimum radius of ten miles around an existing dealership;

Texas 4.02

(d) RMA is 15 miles except

(e) the relocation of a dealership is not subject to protest by a franchised dealer:

(1) if the proposed relocation site is not farther than one mile from the site from which the dealership is being relocated; or

(2) whose dealership is not closer to the proposed location than it is to the location from which the relocated dealership is being relocated.

Utah 13-14-102

(18) (a) RMA except with respect to recreational vehicles, means:

(i) the county in which a dealership is to be established or relocated; and

(ii) the area within a ten-mile radius from the site of the new or relocated dealership.

13-14-302 Except if

(a) less than one aeronautical mile from the existing location of the franchisee's dealership; and

(b) within the same county.

(3) For purposes of this section:

(a) relocation of an existing franchisee's dealership in excess of one mile from its existing location is considered the establishment of an additional franchise in the line-make of the relocating franchise; and

(b) the reopening in a relevant market area of a dealership that has not been in operation for one year or more is considered the establishment of an additional motor vehicle dealership.

Vermont 4085

(12) RMA is 25 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer and there are one or more existing new motor vehicle dealers of the same line-make within a 10-mile radius of the proposed dealer site, the RMA shall in all instances be the area within a radius of 10 miles around an existing dealer.

4098(b) This section does not apply:

- (1) to the relocation of an existing dealer within that dealer's RMA, provided that the relocation not be at a site within six miles of a licensed new motor vehicle dealer for the same line-make of motor vehicle; or
- (2) if the proposed new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line-make of new motor vehicle had ceased operating within the previous two years.

Virginia 46.2-1500  
RMA is

1. In metropolitan localities, a circular area around an existing franchised dealer with a population of 250,000, not to exceed a radius of ten miles but in no case less than seven miles.
2. If the population in an area within a radius of ten miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of fifteen miles around an existing franchised dealer is 150,000 or more, the RMA shall be that area within the fifteen-mile radius.
3. In all other cases twenty miles around an existing franchised dealer or the area of responsibility defined in the franchise, whichever is greater. .

Washington 46.96.140  
RMA is

- (a) 8 miles if the population in the county in which the proposed new or relocated dealership is to be located is four hundred thousand or more;
- (b) 12 miles if the population in the county in which the proposed new or relocated dealership is to be located is two hundred thousand or more and less than four hundred thousand;
- (c) 16 miles if the population in the county in which the proposed new or relocated dealership is to be located is less than two hundred thousand.

46.96.180 Except:

- (1) The sale or transfer of the ownership or assets of an existing new motor vehicle dealer where the transferee proposes to engage in business representing the same line make at the same location or within two miles of that location;
- (2) The relocation of an existing new motor vehicle dealer within the dealer's RMA, if the relocation is not at a site within eight miles of any new motor vehicle dealer of the same line make;

(3) If the proposed new motor vehicle dealer is to be established at or within two miles of a location at which a former new motor vehicle dealer of the same line make had ceased operating within the previous twenty-four months;

(4) Where the proposed relocation is two miles or less from the existing location of the relocating new motor vehicle dealer; or

(5) Where the proposed relocation is to be further away from all other existing new motor vehicle dealers of the same line make in the RMA.

West Virginia 17A.6A-3 and 17A-6A-12

Dealers can move two miles within their RMA without manufacturer approval. The state franchise laws states that a dealer may not relocate with "fifteen air miles" of another like franchise.

Wisconsin

(r) RMA is 10 miles or the area of sales responsibility assigned to the existing enfranchised dealership by the manufacturer, factory branch or distributor, whichever is greater.

4. For purposes of this paragraph:

b. The relocation of a dealership or outlet to a location within 2 miles of the existing location by the closest highway route and within the existing area of sales responsibility assigned to that dealership or outlet by the manufacturer, importer or distributor is not the relocation of a dealership or outlet, unless the location is within 4 miles, by the closest highway route, of another franchised dealer of the same line make and is closer to that dealer than the existing location. The relocation of a dealership or outlet to a location other than a location within 2 miles of the existing location, but within the existing area of sales responsibility assigned to that dealership or outlet by the manufacturer, importer or distributor is not the relocation of a dealership or outlet, unless the relocation site is within 6 miles, by the closest highway route, of the location of another enfranchised dealer of the same line make and is closer to that dealer than the existing location. The relocation of a dealership or outlet to a location outside the area of sales responsibility assigned to the dealership or outlet by the manufacturer is the relocation of a dealership or outlet.

Wyoming 31-16-111

Limitations on establishing or relocating new vehicle dealers.

(a) Protest rights if move closer than 10 miles to another dealer of the same line-make except:

(b) This section does not apply:



- (i) To the relocation of an existing new vehicle dealer within that dealer's RMA, provided that the relocation not be at a site within seven (7) miles of a new vehicle dealer for the same line make of vehicle;
- (ii) If the proposed new vehicle dealer is to be established at or within two (2) miles of a location at which a former new vehicle dealer for the same line make had ceased operating within the previous two (2) years;
- (iii) To the reopening of a new vehicle dealer who temporarily has been out of business;
- (iv) If the protesting new vehicle dealer has not established to the department that he:
  - (A) Is a licensed new motor vehicle dealer of the same line make located within ten (10) miles of the proposed location of the additional new vehicle dealer or of the proposed relocation site of an existing new vehicle dealer;
  - (B) Is providing facilities, equipment, parts, capital and personnel in substantial compliance with its contractual obligations to the manufacturer; and
  - (C) Has attained in the last three (3) years sales penetration for the manufacturer in his area of responsibility that is equal to or greater than the average penetration of all same line make new vehicle dealers in the state; or
- (v) Where the relocation is two (2) miles or less from the existing location of the relocating new vehicle dealer.

